BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III SC03-1846

TRIAL BRIEF ADDRESSING
AMENDED FORMAL CHARGES VI and VII

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby files this, his Trial Brief Addressing Amended Formal Charges VI and VII, and states the following:

FACTS

1. Amended Formal Charges VI and VII pertain to the debate between Judge Renke and his opponent, Declan Mansfield, regarding their respective experience.

2. Declan Mansfield initiated the discussion, asserting that Judge Renke had not been a lawyer for a sufficient length of time to be a judge. (See "Candidates for circuit judge trade barbs over experience," *St. Petersburg Times*, September 10, 2002, page 3, attached as Exhibit 1, ("Mansfield, 51, fired the first salvo. He made it clear in public appearances that he doesn't think Renke, 33, has enough experience to be a judge.")).

3. In response, Judge Renke indicated that while he might not have been a lawyer as long as Mr. Mansfield, Mr. Mansfield practiced in a "narrow" area of

law. In the newspaper article, "Candidates for circuit judge trade barbs over experience," published in the *St. Petersburg Times*, John Renke III's position was described as follows:

> Renke said that he is not making any value judgments about the type of law Mansfield practices. But if Mansfield is going to make an issue out of experience, Renke said that it is only fair that voters know the truth about his opponent. "He's failed to give a full accounting of his background and record," Renke said. "He's been so careful to omit from his stump speeches what he's done for the past 12 years. He always mentions that he's been a prosecutor, but he doesn't mention the criminal defense work," Renke said. "We need to look at the complete picture. His experience is in criminal law, a very narrow area. My experience is much broader."

See Exhibit 1.

4. Similarly, the *St. Petersburg Times* noted in another article that Mr. Mansfield stated that the race for circuit court judge "boils down to experience . . . and in that category, Mansfield says he has a big advantage over his opponent." Mr. Mansfield stated, "I'm afraid my opponent would be overwhelmed." (See "Sixth Judicial Circuit, Group 25 Series: Know Your Candidates," *St. Petersburg Times*, September 5, 2002, State Edition 1, page 17, attached as Exhibit 2.) In response, Judge Renke stated, "I don't disagree that experience is very important. But I think a broad range of experience is just as important." See Exhibit 2.

5. In a September 5, 2002 article titled "Candidates Reply to Endorsements" in the *Tampa Tribune*, Judge Renke also commented on the limited range of his opponent's experience. Specifically, Judge Renke stated as follows:

> My opponent has much more limited experience. His experience is mostly in criminal law, including twelve years of defending people charged with DUI and domestic, elderly and child abuse and other misdemeanors and felonies.

(See *Tampa Tribune* Letter, attached as Exhibit 3). In contrast, Judge Renke stated that he had experience in a wide variety of civil law subjects. Judge Renke explained his experience as follows:

> I received an academic scholarship at the University of Florida and obtained a juris doctorate with honors from Florida State University. I have almost eight years of experience handling complex civil litigation in many areas such as homeowner/condominium association and property law, Fair Housing Act cases, civil rights discrimination, personal injury, probate and foreclosures, defamation, contracts, life insurance, business and commercial law.

(See Exhibit 3) (*emphasis added*).

6. Amended Charge VI refers to a similar candidate reply to the *St. Petersburg Times*. (See Exhibit C to the Amended Formal Charges, attached as Exhibit 4). In this candidate reply, Judge Renke stated as follows:

> I obtained a juris doctorate with honors by Florida State University. I have almost eight years of experience handling complex civil trials in many areas involving deed restrictions, property, fair housing act cases, civil rights discrimination, personal injury, probate, foreclosures, defamation, contracts, life insurance, business and commercial law.

(See Exhibit 4) (*emphasis added*).

7. Amended Charge VII references a campaign mailer in which Judge Renke defends his position in the political debate with his opponent by asserting

that his broad range of experience makes him a better candidate than Mr. Mansfield. (See Exhibit D to the Notice of Amended Formal Charges, attached as Exhibit 5). Amended Charge VII references Judge Renke's statements that his opponent did not have the "kind of broad experience that best prepares someone to serve as our Circuit Court Judge" and his statement asking whether the public's interests "would be better served by an attorney who has many years of broad civil trial experience."

8. In issuing its recommendations, the *St. Petersburg Times* agreed with Mr. Mansfield's contention that John Renke did not have sufficient experience, stating, "[h]e seems to be a responsible young lawyer. But he is not ready yet." In making its determination, the *St. Petersburg Times* relied on Judge Renke's campaign representations, noting that he "admits he has done few trials on his own." (See "For a better judiciary," *St. Petersburg Times*, August 29, 2002, page 14A, attached as Exhibit 6).

9. Declan Mansfield, Esquire, has never participated in a civil jury trial, including sitting as "second chair" or "third chair." Moreover, his only non-jury civil trial was a dog-bite case against a *pro se* litigant. In addition, while Mr. Mansfield has represented hundreds of people in criminal matters, he has only tried three to four criminal jury trials.

10. Declan Mansfield identified himself as a "trial lawyer" in his campaign literature. For example, Mr. Mansfield stated in two separate mailers, "Few can compare with Declan Mansfield's experience. Inside the courtroom and out." (See Election News 2002 mailer, attached as Exhibit 7 and Declan Mansfield "Caring in the Community Respected in the Courtroom" mailer, attached as Exhibit 8). The "headline" for the Election News 2002 mailer stated, "Mansfield cites courtroom experience." (See Exhibit 7). Mr. Mansfield further represented, "[Mansfield's] experience in both civil and criminal trials gives him the full range of experience necessary for effective service on the Circuit Court bench." (See Exhibits 7 and 8).

11. Judge Renke assisted John Renke II in several trials, including a federal civil jury trial that lasted for one week and a civil jury trial that lasted two days. In addition, Judge Renke assisted in four non-jury civil trials in which John Renke II was lead counsel and one non-jury civil trial in which Judge Renke was lead counsel.

12. Although Judge Renke was not lead counsel on many of the cases in his father's firm, Judge Renke was an integral part of the representation of the firm's clients.

ARGUMENT

Special Counsel has the burden of proving any violations of the charged Judicial Canons by clear and convincing evidence. Florida courts define the term 'clear and convincing evidence' as follows:

> [T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

Vigorous political debate is an essential part of the American elective process. See New York Times, Co. v. Sullivan, 376 U.S. 254, 270 (1964) (debate on issues of public opinion should remain "uninhibited, robust and wide-open"). As the Second District Court of Appeals has noted, complaints concerning political debate must be strictly evaluated based on "principles of constitutional law, not on a sense of political correctness, etiquette or even fairness." Dockery v. Florida Democratic Party, 799 So. 2d 291, 293 (Fla. 2d DCA 2001). Indeed, "[t]he First Amendment requires neither politeness or fairness." Pullum v. Johnson, 647 So. 2d 254, 258 (Fla. 1st DCA 1994).

In order to encourage debate between candidates, the First Amendment protects incorrect statements made during the political discussion. See Weaver v. Bonner, 309 F.3d 1312, 1319 (11th Cir. 2002)("erroneous statement is inevitable in free debate, and it must be protected as a freedom of expression or to have the breathing space they need to survive."). In Weaver, the Eleventh Circuit recognized a "candidate's factual blunder is unlikely to escape the notice of, and correction by, the erring candidate's political opponent." Id. at 1320. As such, the "preferred First Amendment remedy of more speech is not enforced silence." If a political candidate feels constrained from freely discussing his/her background and qualifications due to a fear of mis-speaking or making a "factual blunder," the candidate will err on the side of silence. This chilling effect inhibits candidates from educating the electorate concerning their respective experiences.

In the full context of the political debate between Mr. Mansfield and John Renke, III, it is clear that Judge Renke did not intentionally misrepresent his experience. A comparison between both of his candidate replies to the *St. Petersburg Times* and to the *Tampa Tribune* shows that they are substantially the same, except that Judge Renke interchanges the words "trial experience" in the *St. Petersburg Times* with "litigation experience" in the *Tampa Tribune*.

In the legal community, it is common for people who characterize their work as "litigation" to rarely participate in a trial. For example, in Declan Mansfield's

literature, he repeatedly represented himself as a litigator in the courtroom. (See Exhibits 7 and 8). While Mr. Mansfield testified that he handled six hundred to eight hundred personal injury cases in the past fourteen years, he had never participated in a civil jury trial and only tried one civil non-jury trial. Moreover, Mr. Mansfield tried only three to four criminal jury trials while in private practice although he represented hundreds of individuals in criminal matters. Similarly, even though Judge Renke had assisted in two civil jury trials and five civil non-jury trials while working at the Law Offices of John Renke, II, many of the other files on which he worked were in litigation. Judge Renke drafted pleadings, drafted motions for summary judgment, helped develop trial strategy, participated in discovery, attended and assisted with substantive motion hearings and met with clients. Although Mr. Mansfield and Judge Renke both had limited courtroom time, their practices could be accurately described as "litigation."

Since Judge Renke had intended to convey his experience in handling cases in which a complaint and answer had been filed and discovery had commenced, rather than his experience actually trying cases, perhaps the more appropriate term was "litigation experience" rather than "trial experience." Even assuming that litigation was the more appropriate word choice, the *St. Petersburg Times* was not misled concerning this change in terminology as shown by the newspaper noting in its endorsement of Mr. Mansfield that Judge Renke "admits he has done few trials

on his own." After considering the toality of the circumstance, the JQC cannot prove by clear and convincing evidence that Judge Renke's use of the term "trial" instead of "litigation" in one candidate reply letter was a knowing misrepresentation.

To overcome First Amendment protections, the JQC must show that Judge Renke's statement was false and made with actual malice at a minimum. Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002). Judge Renke's reference to "trial experience" rather than "litigation experience" was, at worst, an erroneous statement negligently made and therefore did not reach the actual malice standard. See Weaver at 1320 ("[n]egligent misstatements must be protected in order to give protected speech the 'breathing space' it requires."). The JQC cannot prove any violation pertaining to Charge VI.

Charge VII should also be dismissed because Judge Renke's statement that he had broader civil trial experience than his opponent is accurate. (See Exhibit D, attached to the Amended Notice of Formal Charges). While the JQC supports its allegation by asserting that Mr. Mansfield had "far more experience as a lawyer and in the courtroom," Judge Renke's statements specifically referenced his broader civil experience. (See Exhibits 1 and 2). Mr. Mansfield and Judge Renke's debate regarding their relative qualifications was initiated by Mr. Mansfield. (See Exhibit 1). Mr. Mansfield alleged that Judge Renke, a younger

lawyer, did not have the requisite experience to be a qualified judge. (See Exhibits 1 and 2). Judge Renke responded that he did not "disagree that experience is very important" but that a "broad range of experience is just as important." (See Exhibit 2). Specifically, Judge Renke compared their experience and stated, "We need to look at the complete picture. His experience is in criminal law, a very narrow area. My experience is much broader." (See Exhibit 1).

Judge Renke's claim that he had broader civil trial experience is supported by the record evidence. It is undisputed that Judge Renke assisted in two civil jury trials while Mr. Mansfield testified that he had never participated in or assisted in a civil jury trial, even in a second or third chair capacity. Moreover, Judge Renke participated in or assisted with five civil non-jury trials while Mr. Mansfield's non-jury civil trial experience was limited to one dog-bite case against a *pro se* litigant. In addition, Judge Renke correctly referenced areas of law in which he had experience but his opponent did not. As such, Judge Renke's representation in his political mailer that he had broader civil litigation experience was accurate. Therefore, his true and correct representations as set forth in Charge VII could not violate Canon 7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September, 2005, the original of the foregoing Trial Brief Addressing Amended Formal Charges VI and VII has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by hand delivery to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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